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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0817**

State of Minnesota,
Respondent,

vs.

Thomas Alan Krabbenhoft,
Appellant.

**Filed May 26, 2020
Affirmed
Worke, Judge**

Clay County District Court
File No. 14-CR-18-2577

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Michael D. Leeser, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Hooten, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his conspiracy-to-commit-theft conviction, arguing that the evidence was insufficient to prove the existence of a conspiratorial agreement. We affirm.

FACTS

J.J. is an asset-protection manager at a Walmart in Dilworth, Minnesota. J.J. spends the majority of his time in street clothes on the sales floor looking for shoplifters. On June 26, 2018, J.J. was on the sales floor when he noticed appellant Thomas Alan Krabbenhoft and Cody Nicholas Wolthuis in the electronics department putting a large amount of electronics in a shopping cart, including four or five cell phones. The cell phones drew J.J.'s attention because he was trained to look for people selecting multiple identical items.

From the electronics department, the men went to the sporting goods department where J.J. observed Krabbenhoft put a backpack in the cart and a pack of lighters in his pocket. The men then went to the seasonal department where J.J. observed them fill the backpack with the items in the cart. J.J. contacted Officer Browning to report his observations.

J.J. then watched Krabbenhoft and Wolthuis walk outside the garden center. Officer Browning arrived at the store in time to see the men pushing the cart out of the interior doors in the garden department. One of the men apparently spotted Officer Browning's squad car because the men "stopped walking, they talked to each other, they turned around, and then they went back into the store."

J.J. watched the men walk back into the store and go over to the grills where they hid the backpack behind a display of charcoal. The men exited the store again, and J.J. watched Krabbenhoft stick the pack of lighters in the grille of a car. Officer Browning noticed the pack of lighters sticking out of the front of the vehicle. Officer Browning called

to the men; he said: “You guys know exactly why I’m here to talk to you.” Krabbenhoft replied: “Yeah, but we put everything back.” Krabbenhoft eventually admitted that he took the lighters.

Officer Browning made several attempts to ascertain the men’s identities. Krabbenhoft initially provided a name and date of birth that dispatch was unable to find on file. Krabbenhoft provided his name after Officer Browning told him that he was going to be held because of the misdemeanor theft charge.

J.J. retrieved the backpack from where the men hid it behind the charcoal. The items in the backpack totaled \$1,091.67. Krabbenhoft was charged with conspiracy to commit theft, in violation of Minn. Stat. §§ 609.52, subd. 2(a)(1), .175, subd. 2 (2016), giving a police officer a false name and date of birth, in violation of Minn. Stat. § 609.506, subd. 1 (2016), and theft, in violation of Minn. Stat. § 609.52, subd. 2(a)(1).

J.J. and Officer Browning testified at Krabbenhoft’s jury trial. The jury also watched videos from the store’s surveillance cameras showing the men in the electronics department, in the sporting goods department, and leaving the store. Officer Browning’s body-camera footage was also played for the jury. Krabbenhoft did not testify. The jury found Krabbenhoft guilty on all three counts. The district court sentenced Krabbenhoft to one year and one day in prison for the conspiracy-to-commit-theft conviction; the other two lesser offenses were not adjudicated. This appeal followed.

D E C I S I O N

Krabbenhoft challenges his conspiracy-to-commit-theft conviction, arguing that the state failed to prove the existence of an agreement. In reviewing the sufficiency of the

evidence supporting a conviction, “this court reviews the evidence in the light most favorable to the verdict to determine if the evidence was sufficient to permit the jury to reach the verdict it did.” *State v. Ford*, 539 N.W.2d 214, 225 (Minn. 1995). This court assumes that the jury believed the state’s witnesses and disbelieved evidence to the contrary. *State v. Huss*, 506 N.W.2d 290, 292 (Minn. 1993).

If any element of the offense was supported by circumstantial evidence, this court applies a heightened standard of review. *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013). This standard includes a two-step analysis to determine whether the evidence was sufficient to support the conviction. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). First, this court “identif[ies] the circumstances proved,” “assum[ing] that the jury resolved any factual disputes in a manner that is consistent” with its verdict. *Id.* Second, this court independently examines “the reasonableness of the inferences that might be drawn from the circumstances proved” and determines whether the circumstances proved are consistent with guilt and “inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotations omitted). The evidence is considered as a whole, not each piece in isolation. *State v. Andersen*, 784 N.W.2d 320, 332 (Minn. 2010).

A person is guilty of a conspiracy if he “conspires with another to commit a crime and in furtherance of the conspiracy one or more of the parties does some overt act in furtherance of such conspiracy.” Minn. Stat. § 609.175, subd. 2. An agreement is a necessary element of a conspiracy. *See State v. Hatfield*, 639 N.W.2d 372, 376 (Minn. 2002). “[T]he agreement required for a conspiracy need not be proved through evidence

of a subjective meeting of the minds, but must be shown by evidence that objectively indicates an agreement.” *Id.*

Krabbenhof argues that the state failed to prove the existence of an agreement, but the evidence sufficiently supports Krabbenhof’s conviction. First, there is direct evidence of an agreement. When Officer Browning approached Krabbenhof and Wolthuis in the parking lot, he stated: “You guys know exactly why I’m talking to you.” Krabbenhof replied: “We put it all back.” This reply indicates that Krabbenhof and Wolthuis agreed to commit the theft and then changed their minds when they saw the officer’s squad car.

Krabbenhof challenges this statement; he claims that he replied, “I put it all back.” The state offered a transcript from Officer Browning’s body camera at Krabbenhof’s jury trial. The transcript was admitted only as a court exhibit. The transcript suggests that Krabbenhof replied: “I put it all back.” But this is a transcription error because in the recording, which the jury heard, Krabbenhof said: “We put it all back.” And Officer Browning testified that Krabbenhof replied: “[W]e put everything back.” Furthermore, the transcript did not go to the jury and Krabbenhof never claimed at trial that he said “I put it all back.”

Moreover, evidence of Krabbenhof’s statement is not necessary to support the sufficiency of the evidence because the men’s conduct in the store, by itself, is sufficient to show an agreement. J.J. testified that he watched Krabbenhof and Wolthuis in the store together for approximately an hour and a half. J.J. testified that he knew that the men were together because they were “right next to each other the whole time they were in the store,” and “they were both putting items in the [same] cart.” J.J. also saw Krabbenhof and

Wolthuis talking to each other, although he did not hear their conversations. J.J. testified that he observed both men put items into the backpack and watched both men hide the backpack. Additionally, surveillance video from the store shows the men together. Further, Officer Browning testified that when he was apparently spotted in the parking lot, the men talked to each other and went back into the store. Officer Browning also testified that he initially told the men that he would just give them trespass notices because the store did not want them stealing from it.

These are the circumstances proved: Krabbenhoft and Wolthuis walked around the store together for approximately an hour and a half; both men put items in one cart; the men talked to each other as they put items in the cart; both men put items into a backpack; the men left the store together with the backpack, but upon spotting Officer Browning, talked to each other, and returned to the store; both men hid the backpack; both men left the store together and attempted to avoid Officer Browning; and Officer Browning told both men that they would receive trespass notices. These circumstances proved are consistent with guilt and inconsistent with the hypothesis that Krabbenhoft was planning to commit a theft alone. Based on this record, the evidence sufficiently supports Krabbenhoft's conspiracy-to-commit-theft conviction.

Affirmed.